

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 819 of 1983

with

SPECIAL CIVIL APPLICATION No 6344 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MJ DHOLAKIYA

Versus

GUJARAT ELECTRICITY BOARD

Appearance:

1. Special Civil Application No. 819 of 1983
MR RV DESAI for Petitioners
MR MR GEHANI for Respondent No. 1, 2
2. Special Civil Application No. 6344 of 1983
MR RV DESAI for Petitioners
MR RM VIN for Respondents No. 1 & 4.

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 09/09/96

C.A.V. JUDGEMENT

1. In both these Special Civil Applications the facts are common and the grounds raised are also common, and hence both these Special Civil Applications are disposed of by this common judgment.

SPECIAL CIVIL APPLICATION NO.819 OF 1983.

2. There are in all five petitioners in this Special Civil Application, and petitioners no.1 to 4 are serving as Junior Assistant in the Gujarat Electricity Board at Bhuj Circle Office, and petitioner no.5 is a union, 'Akhil Gujarat Vidyut Kamdar Sangh'. The respondent under sec. 79(c) of the Electricity Supply Act is empowered to make regulations and issue circulars and frame standing orders inter-alia regulating the conditions of the service of the employees. In exercise of that power, the Board has framed regulations, which are known as 'Gujarat Electricity Board Service Regulations' and the standing orders framed are known as 'General Standing Orders'. One General Standing Order No.199 dated 4-6-1970 has been framed prescribing the scales of pay and dearness allowance and other allowances and perquisites to the various cadres of employees in the service of the Board with effect from 1-4-1969. Under the Standing order the time-scale of the Jr. clerks (now re-designated as Jr. Assistants) was prescribed to be 70-226. Another Standing Order no.189 dated 28-3-1967 provides that the graduate -clerks on being recruited are to be paid two additional increments in the said scale and it is to start at the initial salary of Rs.80/- per month, in the scale of 70-226. The petitioners no.1 to 4 are the Commerce graduates and as such they were appointed with a higher start of Rs.80/- in the scale of Rs.70-226. They were given two additional increments as per the provision as contained in G.S.O 189 dated 28th March, 1967. There are various other graduate Jr. Assistants who are similarly appointed with a monthly salary of Rs.80/- and this writ petition has been filed in a representative capacity. The wage structure which has been provided by G.S.O 199 expired on 31-3-1974. Therefore, the employees through their recognised union, served a charter of demand, demanding revision of wages, dearness allowance, other allowances, perquisites, benefits etc. After prolong negotiations with the various recognised unions, the Board arrived at a settlement and revised the wage scales, dearness allowance etc. and embodied the said settlement in a new General Standing Order, No. G.S.O. 266 dated 11-10-1976. This settlement was given effect from 1-4-1974. The scale of Jr. Assistants were revised from 70-226 to that of 290-635. The Board pursuant to G.S.O.

226 dated 11-10-76 refixed the salary of all the Graduate Jr. Assistants including the petitioners at Rs.310/- in the scale of 290-635 with effect from 1-4-1974. The petitioners no.1 to 4 were given two additional increments in the scale of 290-635. Under the office order no. KC-EST-C-PXN/80/1030 dated 8-9-1982, the Superintending Engineer, Bhuj relying on the Head office Circular No.EG/II/K/5-A/28 dated 5-8-1978 refixed the salary of the petitioners no.1 to 4 to Rs.300/- instead of Rs.310/- with effect from 1-4-1974 and ordered immediate recovery of the amount already paid. The order dated 8-9-1982 was considered by the petitioners to be in violation of the G.S.O. 189 and further deprived them of the two advance increments paid to them.

3. The fixation of the salary of the petitioners no.1 to 4 at Rs.300/- with effect from 1-4-1978 in the revised payscale of 290-635 has resulted in fixation of their pay at lower than their junior, one Shri K.M.Vaidya. The petitioner no.5 represented their cases before the respondent Board vide its letter dated KC:EST:B: Pay Anomaly 82/5660 dated 21-5-1982 the Board rectified the anomaly and put the petitioners no.1 to 4 at par with other Junior Shri. K.M.Vaidya in the matter of fixation of their pay. The petitioners have further come up with a case that the union after receiving the complaint from different circles regarding similar fixation of the pay of the graduate Junior Assistants made a representation to the authorities of the Board orally as well as in writing requesting to reconsider the decision and set right the wrong done to the Graduate Junior Assistants under the guise of refixing of their salary. On the expiry of the settlement and G.S.O 266 dated 11-10-76 on 31-3-1978, the wages were further revised by a settlement arrived at between the various recognised Unions of the employees and the Respondent Board and they revised wage structure which came into force with effect from 1-4-1978. The scales of Jr. Assistants were revised from 290-635 to 315-877. In pursuance of the said settlement the Board has issued a General Standing Order being G.S.O. 292. While giving effect to the aforesaid G.S.O. the pay of the petitioners were taken to be Rs.300/- instead of Rs.310/-. The petitioners by this writ petition challenged the order annexure 'E' dated 8-9-1982 under which the pay of the petitioners no.1 to 4 has been fixed from Rs.310 to Rs.300/- and order passed pursuant to the refixation as per G.S.O. 292. In sum and substance, the challenge is made by the petitioners in this Special Civil Application to the benefits which have not been given to Graduate Jr. Assistants of two additional grade

increments.

SPECIAL CIVIL APPLICATION NO.6344 OF 1983.

4. This writ petition has been filed by Gujarat Electricity Employees' Union. In this Special Civil Application the challenge has been made by the petitioner union to the judgment and the order of the Industrial Court dated 7-7-1983 at annexure 'C'. The grievance of the union in the appeal before the Industrial Tribunal was of same nature as it has been made by the petitioners in other writ petition. The matter was regarding taking of the benefit of two additional grade increments given to Graduate Junior Assistants under GSO 189 dated 28-3-1967 read with G.S.O. 266. The further prayer has been made that the respondent Board be restrained from implementing the circular dated 5-8-1978. A copy of this circular has not been filed by the petitioner on the record of this writ petition. A reference of the circular has been made by the petitioner in the body of the writ petition. Under this circular No.EG/3/X/TA/281 dated 5-8-1978 the Board issued instructions to start Graduate clerks at the initial salary of Rs.290/- instead of Rs.310. The petitioner union objected the circular and when the objections were not accepted then the matter has been raised before the Industrial Tribunal. The Industrial Tribunal has also decided the matter against them. Hence this Special Civil Application before this Court.

5. In Special Civil Application No.899 of 1983 the petitioners have given reference to the circular dated 5-8-1978.

6. The learned counsel for the petitioners challenging the validity of the order of the Industrial Tribunal contended that in the subsequent settlement, the benefits which have been given to the graduate clerks under G.S.O. 189 dated 28th March, 1967 was not taken away. There is no specific mention of the fact that the benefits which have been given to graduate clerks under G.S.O. 189 dated 28th March, 1967 is taken away. By making the reference to the G.S.O. the learned counsel for the petitioner contended that where there was understanding not to extend benefit of earlier G.S.Os. a specific reference has been made, but regarding this circular there is no mention at all of either way. There is no mention that the benefit will not continue and as such, the Tribunal has committed a serious error in deciding the matter against the petitioner.

7. The dispute in both the petitions is same but the difference is that in first writ petition some individual petitioners with their union have directly come before this Court and in another writ petition the another union has gone to the Industrial Tribunal and after decision of the said Tribunal it has come before this Court. So in sum and substance, the arguments in both the cases are the same.

8. The challenge is only to the action of the respondent to take away the benefits of two additional grade increments which have been given to the Graduate clerks including the petitioners no.1 to 4 in first writ petition. The counsel for the petitioner lastly contended that the order of recovery of the benefits given to the petitioners no.1 to 4 cannot be said to be justified at all. The order of the recovery could not have been made when the petitioners were given the benefits of the same by the respondent. Even if it is taken to be the case of some mistake made by the Board then for the same, the petitioners could not have been put to loss. The petitioners have taken this benefit bonafidely.

9. On the other hand, the learned counsel for the respondent contended that the Industrial Tribunal has not committed any error whatsoever in making of the judgment impugned before this Court. The petitioners were entitled for the benefits of the circular G.S.O.. 189 while revising the payscale which higher pay scale has been given to the employees and as such whatever other benefits given on the basis of the higher qualifications, the same has been taken away. The settlement has been arrived into between the management and all the unions of the employees and if it would have been intention of the settlement that those benefits should be continued then there must be some specific condition to that effect, but that is not there. When the benefits which have been given to the employees under some earlier G.S.O. are to be continued, the necessary reference has been made in this respect in the settlement. The counsel for the respondent contended that the petitioners were not entitled for any additional grade increments in the revised pay scale. So far the recovery part is concerned, the counsel for the respondent contended that it is a case where by mistake the benefit has been given. It was a case of rectification of the error and as such, the said action cannot be questioned. The petitioners cannot be allowed to retain the benefits which have been given to them for which they were not entitled.

10. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties. It is to be seen that by G.S.O. 266 dated 11-10-76, the pay scale of the Jr. clerks , typist etc. were revised from 70-266 to 290-635. I do not find any provision in G.S.O. 266 dated 11-10-1976 wherein it is mentioned that the provisions of G.S.O. 189 will continue. In case the unions would have settled to continue G.S.O. 189 then there would have been specific reference to the same in G.S.O. 266 dated 11-10-1976. While entering into this settlement for the revised pay scale, it cannot be accepted that the unions were unaware of the fact that under G.S.O. 189 the graduate Jr. Assistants were given the higher start. Under the revised pay scale the settlement has been arrived into with knowing of fact, and G.S.O. 189 was not settled to be continued which gives out that those benefits the union do not want to continue to be given to that class of persons. The learned counsel for the petitioner made submission that under the settlement, G.S.O 189 a right has been accrued to the petitioners no.1 to 4 and that could not have been taken away by the subsequent settlements. This argument of the learned counsel for the petitioner cannot be accepted for two reasons. It is not in dispute that the petitioners no.1 to 4 were appointed on the post of Jr. Assistant after 1-4-74 and before G.S.O. 266 dated 11-10-1976 was framed. The benefit of additional two grade increments were only available to those Jr. Assistants who have been recruited earlier to 1-4-1974 and not after that. Secondly, it cannot be said to be an accrued right because the learned counsel for the petitioner failed to produce on record any document to show that in the advertisement made for inviting the applications for the post of Jr. clerks it has been mentioned specifically that the graduates will get two additional increments. The day on which the petitioners were appointed the settlement was not arrived finally. The earlier settlement was expired on 31-3-1974 and naturally, the subsequent settlement has to be given effect to from 1-4-1974. It is different matter that to arrive at the settlement in the matter, long time has been taken, but the settlement was given effect to from 1-4-1974. In view of this fact, it cannot be said that any right was accrued to the petitioners no.1 to 4. I find sufficient merits in the contention of the learned counsel for the respondent that where the party to settlement was intending to retain any given benefit given under some earlier G.S.O. a specific reference has to be made thereof in the settlement. In G.S.O. No.266 a note regarding the continuation of G.S.O. No.166 has been made. There is not mention that G.S.O. 189 will

continue to remain operative in G.S.O. 266. In G.S.O. 266 a note which provides that an employee drawing additional pay as on 31-3-1974 emanating from earlier, to treat the same as basic pay for the purpose of fixation of the revised scale or continue the same as additional pay till ensuing promotion to the higher scale when it will be taken into account for fixing pay in the higher scale. A provision has further been made to protect any anomaly arising of senior and junior. This G.S.O. is the result of the settlement which has ultimately taken the shape of the award. The demand regarding revision pay scale with effect from 1-4-1974 has been referred by the Government to the Industrial Tribunal, and before that a consent award has been passed on the basis of settlement between the parties in which the union of the employees were the party. But in case, they would have considered to continue this benefit of additional two grade increments then there was no difficulty to have a specific provision in respect thereof which is not a case here. The petitioner union is bound by the settlement arrived into by the union and much more by the award which has been passed on the consent of the parties. That award which has been passed has not been reviewed nor the settlement which has been entered has been modified. In the case of petitioners no.1 to 4 there was anomaly in the pay fixation in the revised pay scale of the juniors and seniors and as such, their pay has been brought of the level of the juniors.

11. I have gone through the G.S.O. 266 and I do not find that the benefits which have been given to the graduates under the G.S.O. 189 has been retained. The Tribunal has considered the settlement between the Board and the Union pertaining to G.S.O. 266. A reference has been made to Clause Q of the settlement by the Tribunal which reads as under.

"Any award, agreement, settlement or condition of service in respect of any demand covered by this order and hitherto in force shall be and is hereby terminated or modified, as the case may be, in so far as it is inconsistent with or contrary to the terms of this order."

It is not a case that there was a demand for continuing two additional grade increments for the graduates in the cadre of Junior Assistant. The settlement nowhere provides for giving of two additional grade increments to the graduates while they were appointed in the cadre of Jr. Assistants. In view of this fact, in case, the contention of the counsel for the petitioner is accepted

then there will be inconsistency with the terms of the settlement arrived into which pertains to G.S.O. 266. The Tribunal has given a finding that whenever the Board revised the wage scales, the Board issues a new G.S.O. for the payment of additional increment to the graduate clerks, but neither such term is there in G.S.O. 266 nor any other G.S.O. has been issued in this respect.

12. Taking into consideration the totality of the facts of this case, I do not find any illegality in the judgment of the Tribunal which calls for interference of this Court. The Tribunal has rightly held that the benefit of two additional grade increments to be given to Jr. clerks who are graduates has not been provided for in G.S.O. 266.

13. The claim of the petitioners in other petition for retention of this benefit is also not tenable as the judgment of the Tribunal is upheld by this Court. Now remains the question of recovery of the benefit given to the petitioners no.1 to 4. So far as the recovery part is concerned, I find sufficient merits in the contention of the learned counsel for the petitioner. It is a case where the petitioners are given the benefit bonafidely, and so they are not at fault. It is not a case where by committing any fraud they have got this benefit. The G.S.O. 266 has come into existence after the appointments of the petitioners no.1 to 4. It is different matter that it was given effect from 1-4-1974. In view of this fact, the recovery of the excess amount paid to the petitioner cannot be allowed to stand.

14. In the result, the Special Civil Application No.6344 of 1984 is dismissed in toto. Rule discharged.

15. So far the Special Civil Application No.819 of 1983 is concerned, it is hereby declared that the petitioners are not entitled for two additional grade increments on the ground that they were graduates in the pay scale of Jr. Assistant. However, the order dated 8-9-1982 is maintained except the part of the said order where the recovery has arisen out of the fixation made thereunder is ordered to be quashed. It is hereby clarified that as a result of the fixation of the pay of the petitioners in the revised pay scale, as revised under G.S.O. 292, no recovery whatsoever should be made from the petitioners no.1 to 4. The excess wages which has been paid to the petitioner from the date of the order annexure 'E' shall be recovered from the petitioners as they continue to get the higher pay vide interim order of this court which has been vacated. Rule

is discharged subject to the aforesaid order.

zgs/-